

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1243-PST-E TCEQ ID: RN101687572 CASE NO.: 34353**  
**RESPONDENT NAME: MIKE LUCIO DBA MIKE LUCIO'S AUTO SERVICE**

Page 1 of 3

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input checked="" type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 106 South Commerce Street, Harlingen, Cameron County</p> <p><b>TYPE OF OPERATION:</b> automotive servicing facility</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on April 20, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b> TCEQ Attorney: Mr. Rudy Calderon, Litigation Division, MC 173, (512) 239-0205 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Ms. Elvia Maske, Air Enforcement Section, MC 128, (512) 239-0789 TCEQ Regional Contact: Mr. David A. Ramirez, Harlingen Regional Office, MC R-15, (956) 430-6048 Respondent: Mr. Mike Lucio, Owner, Mike Lucio's Auto Service, 106 South Commerce Street, Harlingen, Texas 78550 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

## VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> July 13, 2007</p> <p><b>Date of NOE Relating to this Case:</b> July 20, 2007</p> <p><b>Background Facts:</b> The EDPRP was filed January 3, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on January 7, 2008. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> Not yet in compliance.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contains regulated substances [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475 (c)(1)].</li> <li>Failed to provide a corrosion protection system for the UST at the Facility [30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d)].</li> <li>Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</li> <li>Failed to provide amended registration for any change or additional information regarding an UST within 30 days from the date of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].</li> </ol>	<p><b>Total Assessed:</b> \$17,000</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$17,000</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent's UST delivery certificate is revoked immediately. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all of the requirements of this Order.</p> <p><b>Technical Requirements:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately. <ol style="list-style-type: none"> <li>Cease dispensing fuel from the USTs;</li> <li>Cease receiving deliveries of regulated substances into the USTs;</li> <li>Padlock the dispensers;</li> <li>Empty the USTs of all regulated substances; and</li> <li>Temporarily remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.54.</li> </ol> </li> <li>Within 10 days, submit his UST delivery certificate to the TCEQ.</li> <li>Within 15 days, submit a detailed written report documenting the steps taken to comply with Ordering Provision no. 1.</li> <li>Prior to resuming retail sales of gasoline: <ol style="list-style-type: none"> <li>Install and implement a release detection method for the active UST at the Facility; and</li> <li>Install a corrosion protection system for the active UST at the Facility</li> </ol> </li> <li>Prior to receiving deliveries of gasoline: <ol style="list-style-type: none"> <li>Submit payment for all outstanding fees, including any associated penalties and interest;</li> <li>Submit documentation demonstrating acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs;</li> </ol> </li> </ol>

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>5. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p> <p>6. Failed to pay outstanding UST fees for TCEQ Financial Account No. 0032789U for fiscal year 2006 and 2007 [30 TEX. ADMIN. CODE § 334.22 (a) and TEX. WATER CODE § 5.702].</p>		<p>c. Submit and amended registration for any changes or additional information regarding the USTs at the Facility;</p> <p>d. Permanently remove from service all inactive USTs at the Facility; and</p> <p>e. Obtain a new delivery certificate.</p> <p>6. Upon obtaining a new delivery certificate, post the delivery certificate in a location where the document is clearly visible at all times.</p> <p>7. Within 10 days of resuming service of the USTs, submit written certification to demonstrate compliance with Ordering Provision nos. 4.a. through 6.</p> <p>The Respondent's USTs shall remain out of service until such time as the Respondent demonstrates to the satisfaction of the Executive Director that he has corrected violation nos. 1 and 2.</p> <p>If the Respondent elects to permanently remove from service any UST systems at the Facility, the Respondent shall permanently remove those UST systems in accordance with 30 TEX. ADMIN. CODE § 334.55, and shall, within 15 days, submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

**TCEQ**

**DATES**

Assigned

23-Jul-2007

PCW

30-Oct-2007

Screening

30-Jul-2007

EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent Mike Lucio dba Mike Lucio's Auto Service

Reg. Ent. Ref. No. RN101687572

Facility/Site Region 15-Harlingen

Major/Minor Source Minor

## CASE INFORMATION

Enf./Case ID No. 34353

Docket No. 2007-1243-PST-E

Media Program(s) Petroleum Storage Tank

Multi-Media

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

No. of Violations 6

Order Type 1660

Enf. Coordinator Elvia Maske

EC's Team Enforcement Team 6

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)**

Subtotal 1 \$17,000

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0% Enhancement Subtotals 2, 3, & 7 \$0

Notes No adjustment for compliance history.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary  
Ordinary  
N/A X (mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts \$1,318  
Approx. Cost of Compliance \$20,250  
0% Enhancement\*  
\*Capped at the Total EB \$ Amount  
Subtotal 6 \$0

**SUM OF SUBTOTALS 1-7**

Final Subtotal \$17,000

## OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Adjustment \$0

Notes

Final Penalty Amount \$17,000

## STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$17,000

## DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

0% Reduction Adjustment \$0

Notes

Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY**

\$17,000

Screening Date 30-Jul-2007

Docket No. 2007-1243-PST-E

PCW

Respondent Mike Lucio dba Mike Lucio's Auto Service

Policy Revision 2 (September 2002)

Case ID No. 34353

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101687572

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

Screening Date 30-Jul-2007

Docket No. 2007-1243-PST-E

PCW

Respondent Mike Lucio dba Mike Lucio's Auto Service

Policy Revision 2 (September 2002)

Case ID No. 34353

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101687572

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.50(a)(1)(A) and Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances. Specifically, the active UST did not have a method of release detection.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could be exposed to pollutants which may exceed levels that are protective of human health and environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

17 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One monthly event is recommended beginning from the July 13, 2007 record review date to the July 30, 2007 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$42

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

## Economic Benefit Worksheet

**Respondent** Mike Lucio dba Mike Lucio's Auto Service  
**Case ID No.** 34353  
**Reg. Ent. Reference No.** RN101687572  
**Media** Petroleum Storage Tank  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	13-Jul-2007	1-Feb-2008	0.6	\$42	n/a	\$42

Notes for DELAYED costs

Estimated cost to provide release detection for the USTs. The date required is the record review date and the final date is the expected date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$42

Screening Date 30-Jul-2007

Docket No. 2007-1243-PST-E

PCW

Respondent Mike Lucio dba Mike Lucio's Auto Service

Policy Revision 2 (September 2002)

Case ID No. 34353

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101687572

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.49(a)(1) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to provide a corrosion protection system for the UST at the facility. Specifically, the active UST did not have corrosion protection.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could be exposed to pollutants which may exceed levels that are protective of human health and environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

17

Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One monthly event is recommended beginning from the July 13, 2007 record review date to the July 30, 2007 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$311

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500



## Economic Benefit Worksheet

**Respondent** Mike Lucio dba Mike Lucio's Auto Service  
**Case ID No.** 34353  
**Reg. Ent. Reference No.** RN101687572  
**Media** Petroleum Storage Tank  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment	\$8,000	13-Jul-2007	1-Feb-2008	0.6	\$15	\$297	\$311
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for installation of a corrosion protection system. The date required is the date of the record review and the final date is the expected date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$8,000

TOTAL

\$311

Screening Date 30-Jul-2007

Docket No. 2007-1243-PST-E

PCW

Respondent Mike Lucio dba Mike Lucio's Auto Service

Policy Revision 2 (September 2002)

Case ID No. 34353

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101687572

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 37.815(a) and (b)

Violation Description

Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. Specifically, the active UST did not have financial assurance.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

365 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended for the one active UST as based on the record review conducted on July 13, 2007.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$683

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

## Economic Benefit Worksheet

**Respondent** Mike Lucio dba Mike Lucio's Auto Service  
**Case ID No.** 34353  
**Reg. Ent. Reference No.** RN101687572  
**Media** Petroleum Storage Tank  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$650	13-Jul-2006	13-Jul-2007	1.0	\$33	\$650	\$683
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for one petroleum UST for the 12 month period prior to the record review.

Approx. Cost of Compliance

\$650

TOTAL

\$683

Screening Date 30-Jul-2007

Docket No. 2007-1243-PST-E

PCW

Respondent Mike Lucio dba Mike Lucio's Auto Service

Policy Revision 2 (September 2002)

Case ID No. 34353

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101687572

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 334.7(d)(3)

Violation Description

Failed to provide amended registration for any change or additional information regarding an UST within 30 days from the date of the occurrence of the change or addition. Specifically, registration was not updated to reflect the current in-service status for the active UST.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

17 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended based on a record review conducted on July 13, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

## Economic Benefit Worksheet

**Respondent** Mike Lucio dba Mike Lucio's Auto Service  
**Case ID No.** 34353  
**Reg. Ent. Reference No.** RN101687572  
**Media** Petroleum Storage Tank  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

**Item Cost**    **Date Required**    **Final Date**    **Yrs**    **Interest Saved**    **Onetime Costs**    **EB Amount**  
**Item Description** No commas or \$

### Delayed Costs

Equipment			0.0	\$0	\$0	\$0
Buildings			0.0	\$0	\$0	\$0
Other (as needed)	\$100	13-Jul-2007	1-Feb-2008	0.6	\$0	\$4
Engineering/construction			0.0	\$0	\$0	\$0
Land			0.0	\$0	n/a	\$0
Record Keeping System			0.0	\$0	n/a	\$0
Training/Sampling			0.0	\$0	n/a	\$0
Remediation/Disposal			0.0	\$0	n/a	\$0
Permit Costs			0.0	\$0	n/a	\$0
Other (as needed)			0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to update the UST registration. The date required is the record review date and the final date is the expected date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal			0.0	\$0	\$0	\$0
Personnel			0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.0	\$0	\$0	\$0
Supplies/equipment			0.0	\$0	\$0	\$0
Financial Assurance [2]			0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.0	\$0	\$0	\$0
Other (as needed)			0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

Screening Date 30-Jul-2007

Docket No. 2007-1243-PST-E

PCW

Respondent Mike Lucio dba Mike Lucio's Auto Service

Policy Revision 2 (September 2002)

Case ID No. 34353

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101687572

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 334.47(a)(2)

Violation Description

Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Specifically, it was documented that there were four out of service USTs which had not been brought into timely compliance.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could be exposed to pollutants which may exceed levels that are protective of human health and environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 4

17

Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$10,000

Four monthly events are recommended (one month per tank) based on a record review conducted on July 13, 2007 to the July 30, 2007 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$278

Violation Final Penalty Total \$10,000

This violation Final Assessed Penalty (adjusted for limits) \$10,000

## Economic Benefit Worksheet

**Respondent** Mike Lucio dba Mike Lucio's Auto Service  
**Case ID No.** 34353  
**Reg. Ent. Reference No.** RN101687572  
**Media** Petroleum Storage Tank  
**Violation No.** 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$10,000	13-Jul-2007	1-Feb-2008	0.6	\$278	n/a	\$278

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. The date required is the date of the record review and the final date is the expected date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$278

Screening Date 30-Jul-2007

Docket No. 2007-1243-PST-E

PCW

Respondent Mike Lucio dba Mike Lucio's Auto Service

Policy Revision 2 (September 2002)

Case ID No. 34353

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101687572

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 334.22(a) and Tex. Water Code § 5.702

Violation Description Failed to pay outstanding UST fees for TCEQ Financial Account No. 0032789U for fiscal years 2006 and 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Adjustment \$10,000

\$0

Violation Events

Number of Violation Events

Number of violation days

mark only one  
with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$0

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0



## Economic Benefit Worksheet

**Respondent** Mike Lucio dba Mike Lucio's Auto Service  
**Case ID No.** 34353  
**Reg. Ent. Reference No.** RN101687572  
**Media** Petroleum Storage Tank  
**Violation No.** 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

N/A

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

N/A

Approx. Cost of Compliance

\$0

TOTAL

\$0

# Compliance History

Customer/Respondent/Owner-Operator:	CN600912620	Lucio, Mike	Classification: AVERAGE BY DEFAULT	Rating: 3.01
Regulated Entity:	RN101687572	MIKE LUCIO'S AUTO SERVICE	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION		13926
Location:	106 S COMMERCE ST, HARLINGEN, TX, 78550		Rating Date: 9/1/2006	Repeat Violator: NO
TCEQ Region:	REGION 15 - HARLINGEN			
Date Compliance History Prepared:	July 30, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 30, 2002 to July 30, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Elvia Maske Phone: (512) 239-0789

## Site Compliance History Components

- |  |            |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes        |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No         |
| 3. If Yes, who is the current owner?   | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)?  | <u>N/A</u> |
| 5. When did the change(s) in ownership occur?  | <u>N/A</u> |

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 07/20/2007 (561994)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
MIKE LUCIO DBA MIKE  
LUCIO'S AUTO SERVICE;  
RN101687572**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT AND SHUTDOWN ORDER DOCKET NO. 2007-1243-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 5, 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the revocation of the Respondent's underground storage tank ("UST") delivery certificate, the imposition of an administrative penalty and corrective action of the respondent. The TCEQ also considered the Motion of the Executive Director requesting entry of an order requiring the respondent, Mike Lucio dba Mike Lucio's Auto Service ("Mr. Lucio.") to shutdown or remove from service the USTs at Mike Lucio's Auto Service, located at 106 South Commerce Street, Harlingen, Cameron County, Texas (the "Facility").

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Mr. Lucio owns and operates an automotive servicing facility located at 106 South Commerce Street, Harlingen, Cameron County, Texas (the "Facility"). Currently, Mr. Lucio has four out of service petroleum UST tanks located at the Facility and one UST tank that is in service as a used oil storage tank.
2. Mr. Lucio's five underground storage tank(s) ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Lucio's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on July 13, 2007, a TCEQ Harlingen Regional Office investigator documented that Mr. Lucio:

- a. Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contains regulated substances. Specifically, the active UST did not have a method of release detection;
  - b. Failed to provide a corrosion protection system for the UST at the Facility. Specifically, the active UST did not have corrosion protection;
  - c. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. Specifically, the active UST did not have financial assurance;
  - d. Failed to provide amended registration for any change or additional information regarding an UST within 30 days from the date of the occurrence of the change or addition. Specifically, registration was not updated to reflect the current in-service status for the active UST;
  - e. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Specifically, it was documented that there were four out of service USTs which had not been brought into timely compliance; and
  - f. Failed to pay outstanding UST fees for TCEQ Financial Account No. 0032789U for fiscal years 2006 and 2007.
4. By letter dated July 20, 2007 the TCEQ Harlingen Regional Office provided Mr. Lucio with notice of the violations and the TCEQ's authority to shut down and remove from service UST systems not in compliance with UST system release detection, spill and overfill prevention and/or corrosion protection requirements if the violations were not corrected.
  5. Mr. Lucio received notice of the violations on or about July 25, 2007.
  6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Mike Lucio dba Mike Lucio's Auto Service" (the "EDPRP") in the TCEQ Chief Clerk's office on January 3, 2008.

7. By letter dated January 3, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Lucio with notice of the EDPRP. According to the return receipt "green card," Mr. Lucio received notice of the EDPRP on January 7, 2008, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Mr. Lucio received notice of the EDPRP, provided by the Executive Director. Mr. Lucio failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
9. As of the date of entry of this Order, Mr. Lucio has not corrected the release detection and corrosion protection violations noted during the June 27, 2007 investigation.
10. The UST system at the Facility does not have release detection as required by 30 TEX. ADMIN. CODE § 334.50, does not have corrosion protection as required by 30 TEX. ADMIN. CODE § 334.49, and may be releasing petroleum products to the environment without the knowledge of the tank owner or operator. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Lucio is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Lucio failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contains regulated substances, in violation of 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).
3. As evidenced by Finding of Fact No. 3.b., Mr. Lucio failed to provide a corrosion protection system for the UST at the Facility, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d).
4. As evidenced by Finding of Fact No. 3.c., Mr. Lucio failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
5. As evidenced by Finding of Fact No. 3.d., Mr. Lucio failed to provide amended registration for any change or additional information regarding an UST within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).

6. As evidenced by Finding of Fact No. 3.e., Mr. Lucio failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
7. As evidenced by Finding of Fact No. 3.f., Mr. Lucio failed to pay outstanding UST fees for TCEQ Financial Account No. 0032789U for fiscal years 2006 and 2007, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.
8. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Lucio with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
9. As evidenced by Finding of Fact No. 8, Mr. Lucio failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Lucio and assess the penalty recommended by the Executive Director.
10. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Lucio for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
11. An administrative penalty in the amount of seventeen thousand dollars (\$17,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
12. As evidenced by Finding of Fact Nos. 3, 4, 5, 9, and 10, Mr. Lucio failed to correct documented violations of Commission requirements within 30 days after Mr. Lucio received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
13. TEX. WATER CODE § 26.3475(e) authorizes the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overfill protection for tanks, and/or corrosion protection for tanks and piping.

14. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
15. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Lucio's UST delivery certificate if the Commission finds that good cause exists.
16. Good cause for revocation of Mr. Lucio's UST delivery certificate exists as justified by Findings of Fact Nos. 3 through 10 and Conclusions of Law Nos. 2 through 9 and 12.
17. As evidenced by Finding of Fact Number 10, current conditions at the Facility constitute an imminent peril to public health, safety and welfare. Therefore, pursuant to TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

#### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Immediately upon the effective date of this Order:
  - a. Mr. Lucio shall take the following steps to shut down operations of the non-compliant UST systems at the Station:
    - i. Cease dispensing fuel from the USTs;
    - ii. Cease receiving deliveries of regulated substances into the USTs;
    - iii. Padlock the dispensers;
    - iv. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
    - v. Temporarily remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
  - b. Mr. Lucio's UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. Lucio may submit an application for a new delivery certificate only after Mr. Lucio has complied with all of the requirements of this order.

2. Within 10 days after the effective date of this Order, Mr. Lucio shall send his UST delivery certificate to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

3. Within 15 days after the effective date of this Order, Mr. Lucio shall submit to the Executive Director a detailed written report documenting the steps he has taken to comply with Ordering Provisions Nos. 1.a.i. through 1.a.v. Mr. Lucio shall submit the report to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

David A. Ramirez, Waste Section Manager  
Texas Commission on Environmental Quality  
Harlingen Regional Office  
1804 West Jefferson Ave.  
Harlingen, Texas 78550-5247

4. If Mr. Lucio elects to permanently remove from service any UST systems at the Facility, Mr. Lucio shall permanently remove those UST systems in accordance with 30 TEX. ADMIN. CODE § 334.55, and shall, within 15 days after the effective date of this Order, submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. Mr. Lucio shall submit the report to:

Petroleum Storage Tank Registration Team, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087



5. Mr. Lucio is assessed an administrative penalty in the amount of seventeen thousand dollars (\$17,000.00) for violations of TEX. WATER CODE chs. 5 and 26 and the rules of the TCEQ. The payment of this administrative penalty and Mr. Lucio's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Mike Lucio dba Mike Lucio's Auto Service; Docket No. 2007-1243-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

6. Mr. Lucio's USTs shall remain out of service pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a. through 1.e., until such time as Mr. Lucio demonstrates to the satisfaction of the Executive Director that he has corrected the violations noted in Findings of Fact Nos. 3.a and 3.b. and Conclusions of Law Nos. 2 and 3 as listed herein.
7. Prior to resuming retail sales of gasoline, Mr. Lucio shall:
- a. Install and implement a release detection method for the active UST at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50.
  - b. Install a corrosion protection system for the active UST at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.49.
8. Prior to receiving gasoline deliveries, Mr. Lucio shall:
- a. Submit payment for all outstanding fees, including any associated penalties and interest and with the notation, "Mike Lucio dba Mike Lucio's Auto Service, TCEQ Financial Account No. 0032789U" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

- b. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815. to:

Registration and Reporting Section  
Permitting & Remediation Support Division, MC-138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- c. Submit an amended UST registration to reflect the current operational status of the active UST, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section  
Permitting & Remediation Support Division, MC-138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- d. Permanently remove the four out of service USTs from service, in accordance with the applicable provisions of 30 TEX. ADMIN. CODE § 334.55; and

- e. Obtain a new delivery certificate.

9. Within 10 days of resuming service of the USTs, Mr. Lucio shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 7.a. through 8.d. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Mr. Lucio shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 7.a. through 8.d. to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

David A. Ramirez, Waste Section Manager  
Texas Commission on Environmental Quality  
Harlingen Regional Office  
1804 West Jefferson Ave.  
Harlingen, Texas 78550-5247

10. Upon obtaining a new delivery certificate, Mr. Lucio shall post the delivery certificate in a location where the document is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
11. All relief not expressly granted in this Order is denied.
12. The provisions of this Order shall apply to and be binding upon Mr. Lucio. Mr. Lucio is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
13. If Mr. Lucio fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Lucio's failure to comply is not a violation of this Order. Mr. Lucio shall have the burden of establishing to the Executive Director's satisfaction that such an

event has occurred. Mr. Lucio shall notify the Executive Director within seven days after Mr. Lucio becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

14. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Lucio shall be made in writing to the Executive Director. Extensions are not effective until Mr. Lucio receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
15. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Lucio if the Executive Director determines that Mr. Lucio has not complied with one or more of the terms or conditions in this Order.
16. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
17. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE §70.106(d) and TEX. GOV'T CODE § 2001.144.

Mike Lucio dba Mike Lucio's Auto Service  
Docket No. 2007-1243-PST-E  
Page 11

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF RUDY CALDERON**

STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS       §

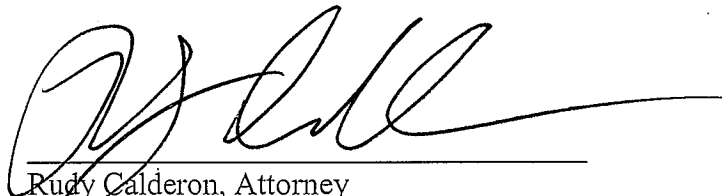
"My name is Rudy Calderon. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Mike Lucio dba Mike Lucio's Auto Servicing" (the "EDPRP") was filed with the Office of the Chief Clerk on January 3, 2008.

The EDPRP was mailed to Mr. Lucio at its his last known address on January 3, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. Lucio received notice of the EDPRP on January 7, 2008, as evidenced by the signature on the card.

More than 20 days have elapsed since Mr. Lucio received notice of the EDPRP. Mr. Lucio failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference."

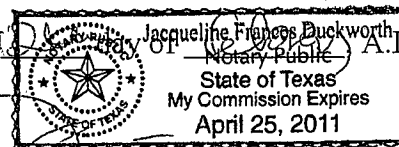
As of the date of this affidavit, Mr. Lucio has not corrected the violations noted during the May 24, 2007 investigation."



Rudy Calderon, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 2nd day of February, 2008.



Notary Signature